



RUBY-SPEARS ENTERPRISES, INC.

3255 Cahuenga Boulevard
Hollywood, California 90068
(213) 874-5100



as of June 25, 1982

Harriet Beck
DIRECTOR OF
BUSINESS AFFAIRS

CONFIDENTIAL

Nintendo of America, Inc.
4820 15th Avenue, N.E.
Redmond, Washington 98052
Attention: Mr. Minoru Arakawa

Re: "Donkey Kong"

Gentlemen:

This letter will set forth the agreement which Nintendo of America, Inc., (hereinafter "Nintendo" or "you") and Ruby-Spears Enterprises, Inc., (hereinafter "Ruby-Spears" or "we") have reached concerning the terms by which we shall acquire an exclusive license to develop the above-referenced video game format and ancillary and derivative characters related thereto (the "Property") for television programs and/or theatrical feature films based on the Property.

1. Option. You shall grant to us an exclusive irrevocable option for a period of six (6) months commencing October 1, 1982. In consideration of the option granted to us by you hereunder, we shall pay to you the sum of Two Thousand Five Hundred Dollars (\$2,500) upon your execution hereof. We shall have the right during the option period to develop the Property for use in potential television programs and/or theatrical film based upon the Property. Any option monies paid to you hereunder shall be applicable against the first royalties due you in the event an animated project is produced and aired. During the option period we shall seek an order from a U.S. television network which would require delivery of programs for the 1983/84 broadcast season commencing no later than the third week of September, 1983. We may exercise the option by written notice to you on or before March 31, 1983. If we fail to exercise the option, all of our rights hereunder shall lapse. At such time as we receive notice from the network of the delivery date of the first program for the commencement of the network's 83/84 broadcast requirements, we shall promptly give written notice of such delivery date to Nintendo. In the event we are unable to meet the network's delivery date (after exercise of our option) or we at any time cease production such that we are no longer able to meet such delivery date, we shall promptly notify Nintendo in writing of such occurrence and Nintendo shall have the right within thirty (30) days thereafter, to terminate this agreement.

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In the event that we fail to commence the delivery of programs hereunder in accordance with the requirements of the network, Nintendo shall have the right to terminate this agreement at any time following confirmation by the network that delivery of programs shall no longer be accepted for the 1983/84 broadcast season, or if we are unable to deliver the programs for airing during the fall of 1983. Upon any such event of termination as provided herein, all rights hereunder shall revert to Nintendo and this agreement shall no longer be of any force and/or effect.

2. Royalties.

A. In the event a television program (or programs) is produced by us and aired, the following royalties shall be payable to you for each such program aired within thirty (30) days of the first air date:

(1) Series. We shall pay you the sum of Seven Thousand Five Hundred Dollars (\$7,500) for each thirty (30) minute series episode. For any episode less than or more than thirty (30) minutes in length, your royalty shall be prorated based upon such series royalty rate;

(2) Specials. We shall pay to you the sum of Ten Thousand Dollars (\$10,000) for each thirty (30) minute special. For any special less than or more than thirty (30) minutes in length, your royalty shall be prorated based upon such royalty rate;

(3) Reruns. The initial royalty would entitle us to the number of reruns called for under the initial network order. After recoupment of our production deficits, if any, additional network reruns over and above those called for under the initial royalty would be compensated to you at ten percent (10%) of the license fee received by us for any such additional run.

The television royalties payable hereunder shall be increased from year to year, if at all, in the same percentage of increase in license fee received by us, if any.

B. In the event a theatrical feature film is developed and produced by us hereunder, we shall pay to you the sum of One Hundred Thousand Dollars (\$100,000) for each such theatrical feature film so produced within thirty (30) days after commencement of principal photography or animation, as the case may be. You shall also be entitled to receive an amount equal to the applicable percentage of net profits set forth in Paragraph 4 below.

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3. License Granted. In the event Ruby-Spears exercises its option hereunder by written notice to you that it intends to produce the subject programs, Ruby-Spears shall have the sole and exclusive worldwide television and theatrical license, excluding Japan, in the Property and would be entitled to create and produce television programs and/or theatrical feature films based upon the Property and to create new, on-going and incidental characters relating to the Property. In the event Nintendo, or its licensee or affiliate, produces no such programs or films for the Japanese market, side of the territory of Japan. [Ruby-Spears shall own in perpetuity any and all television programs and/or feature films produced by it and the characters, stories, teleplay, musical and literary material created by Ruby-Spears and all distribution and exhibition rights in any program or film produced by it.] Ruby-Spears may exhibit such programs or films in all media and forms including, but not limited to, pay television, cable television, video discs and/or cassettes. All rights not specifically granted to Ruby-Spears hereunder shall be reserved to Nintendo including, but not limited to, all uses of the Property and any characters based upon the Property, whether created by Nintendo or by Ruby-Spears, in connection with arcade and/or home video games. In that regard, Nintendo shall have the sole and exclusive right to use any new, on-going or incidental names and characters created by Ruby-Spears hereunder in any arcade and video games hereafter created by Nintendo without payment of additional consideration to Ruby-Spears and nothing contained herein shall give Ruby-Spears the right to use the Property, or characters based upon the Property for purposes other than the production and exhibition of television programs and/or theatrical films. We shall have the right to use the music associated with the electronic games based upon the Property in the production and exhibition of television programs or feature films hereunder perpetually throughout the world in all media without further compensation to Nintendo. However, all rights to exploit such music separate from such programs or films shall be deemed a merchandising right and shall remain with Nintendo. In the event we obtain a network order for television programs and we exercise our option hereunder, we shall have the right to produce such programs for a term coextensive with the right of the network to order such programs plus one additional year within which to secure an order for the production of new programs from another network or elsewhere. In the event we succeed in obtaining a new order for the production of programs, this agreement shall remain in full force and effect.

4. Net Profits. You shall be entitled to receive twenty-five percent (25%) of one hundred percent (100%) of the net profits derived by Ruby-Spears from the exploitation of any

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television program or programs based on the Property. You shall be entitled to receive five percent (5%) of one hundred percent (100%) of the net profits derived from the exploitation of any theatrical feature film produced and released hereunder. Net profits shall be defined in accordance with Ruby-Spears' standard definition of net profits attached hereto as Exhibit "A" and made a part hereof. In determining net profits, Ruby-Spears shall be entitled to an overhead fee of ten percent (10%) on the cost of production, and the actual customary off-network distribution fees charged by Worldvision at the time of such distribution.

5. Spinoffs; Sequels. In the event a feature film, television series and/or television special is produced based on the Property and/or a spinoff series, special sequel or theatrical sequel containing one or more of the original characters created by Ruby-Spears is produced, then you shall receive fifty percent (50%) of the applicable original royalty set forth in Paragraph 2 above and fifty percent (50%) of the applicable profit participation set forth in Paragraph 4 above for each theatrical sequel, spinoff series or special sequel. A "spinoff series" shall be defined as a television series which is based upon an original character or characters created by Ruby-Spears. A "sequel" shall be defined as a television or theatrical motion picture which is produced subsequent to the series and based upon the series: (i) in which the main character or characters are the original character or characters created by Ruby-Spears; (ii) in which the character or characters are shown as participating for the most part in different events from those in which such character or characters participated in the series; and (iii) in which the story is substantially different from that set forth in the series or a prior motion picture.

6. Approvals. We agree to submit to Nintendo the main models containing the proposed appearance of the principal characters to be used in the animated product produced hereunder. We further agree to submit to Nintendo and its designees storylines or teleplays of each program to be produced hereunder in advance of production of each such program. Nintendo shall review such storylines or teleplays solely for the purpose of maintaining, to the extent possible, the basic concept of the "Donkey Kong" Property so as not to conflict with or interfere with the exploitation of the "Donkey Kong" and related video games. Within five (5) working days following your receipt of such storyline or teleplay, Nintendo shall notify Ruby-Spears of its approval or disapproval of such submitted storyline or teleplay, utilizing its reasonable, good faith application of its judgement for the purpose set forth in the immediately preceding sentence. [You shall have ten (10) working days after

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your receipt of the model sheets within which to approve or disapprove the main models. Nintendo shall appoint a designated individual upon whom Ruby-Spears may rely for the purpose of Nintendo's approval or disapproval. In the event Nintendo gives a verbal disapproval to Ruby-Spears, it shall be confirmed in writing within forty-eight (48) hours thereof or within seven (7) days following receipt by Nintendo of such main models, storyline or teleplay, whichever shall first occur, and in such event, Ruby-Spears shall withdraw or revise such models, storyline or teleplay so as to comply with the conditions of this paragraph. In the event Nintendo does not timely disapprove each such storyline or teleplay, it shall be deemed to have approved such storyline or teleplay.

7. Copyright. Subject to the license granted pursuant to Paragraph 3, the copyright notice to be placed on each program or feature film prior to this publication or public distribution shall be in the name of Nintendo. You will advise us of the proper form of the copyright line to be placed on each program prior to the end of the production period as designated by us. Notwithstanding the foregoing, Ruby-Spears shall be the sole owner of the product produced hereunder including, but not limited to all program and film negatives, and any Certificate of Copyright Registration shall reflect existence of the agreement between us and our ownership of the produced product.

8. Credit. You shall receive appropriate credit on the screen in a form substantially as follows, subject to network approval. You shall receive a credit in the end titles of each program produced hereunder which reads, "This program is based upon a video game "Donkey Kong" made by Nintendo." In the case of a theatrical feature film, your logo shall also appear in the end titles. We shall also place in the end titles a statement which reads, "The trademarks DONKEY KONG™ and DONKEY KONG JUNIOR™ and all rights therein are the property of Nintendo Company Ltd. and Nintendo of America, Inc. All rights reserved." You understand that network policy forbids the use of dual logos in the program credits. We shall, however, use our reasonable efforts to obtain approval for the use of your logo, if possible. However, no casual or inadvertent failure to accord you such credit shall be deemed a breach of our agreement hereunder.

9. Merchandising. Nintendo shall own all merchandising rights in the Property, the characters associated therewith and/or any new characters created by Ruby-Spears for use in any programs or feature films produced hereunder and Ruby-Spears shall have no interest therein.

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10. Representations. You represent and warrant that you have the full authority to grant to us all rights granted hereunder. You have informed us and we acknowledge that Nintendo is a registered trademark and that you have filed a trademark application for the trademarks, "Donkey Kong" and "Donkey Kong Junior", and have registered the "Donkey Kong" and "Donkey Kong Junior" audio-visual works for copyright. Ruby-Spears acknowledges your exclusive right, title and interest in and to the trademarks described herein and will not at any time do or cause to be done any act or thing contesting or in any way impairing or intending to impair any part of such right, title and interest. In connection with the use of the trademarks and copyrighted materials and the copyrightable materials produced or to be produced hereunder, Ruby-Spears agrees that it shall not in any manner represent that it has any ownership in such trademarks or copyrighted or copyrightable materials. Notwithstanding the foregoing, Nintendo has advised Ruby-Spears and Ruby-Spears acknowledges that Universal City Studios, Inc. has filed a lawsuit against Nintendo concerning the Property and that Nintendo makes no warranties, representation, or indemnities of any kind with respect to the subject matter of that lawsuit. Ruby-Spears therefore recognizes that any claims against it, its affiliates, licensees and/or assignees by Universal and/or the defense and/or resolution of such claims shall be the sole responsibility of Ruby-Spears.

If the foregoing is satisfactory with you, please so signify by signing the enclosed copy of this letter in the space provided and return the signed copy to me. We will then forward to you a more formal agreement embodying the terms hereof along with other standard terms and conditions customary in the industry. Pending the execution of such agreement, this letter shall constitute a binding agreement between us.

Cordially,

Harriet Beck

Harriet Beck

AGREED TO AND ACCEPTED:

NINTENDO OF AMERICA, INC.

By

Minoru Arakawa
Minoru Arakawa

HB:js

cc: Walter Teller, Esq.
Joe Ruby

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RUBY-SPEARS ENTERPRISES, INC.

By

Kenneth C. Spears
Kenneth C. Spears

Irwin Russell, Esq.
Alvin Farleer

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SCHEDULE - NET PROFITS

1. Net Profits shall be determined by deducting from Gross Receipts the aggregate of distribution fees, distribution expenses, and production costs, if applicable.
2. Gross Receipts shall mean all monies actually received by Company from the broadcast, exhibition and distribution of the series in any and all media, including, but not limited to video cassettes and discs. Gross Receipts shall be determined after all refunds, credits, discounts, adjustments, and costs of collections. Advance payments and security deposits shall not be included in Gross Receipts until earned, forfeited or applied to the series; provided, however, any interest charges that would otherwise be charged to you hereunder, applicable against such advance payments and/or security deposits, shall be tolled.
3. Distribution Fees shall mean the actual fees paid to third parties or, if Company performs the sales itself, the following percentages of Gross Receipts, which shall include any fees payable to sub-distributors, relating to the series:

A. Television (including cable and pay TV)

- (1) 5% - commission to the Sy Fischer Agency from licenses to the ABC, CBS or NBC Television Networks and/or HBO or Showtime for the initial broadcasting of the series, including the first reruns of the series when such reruns are included as a part of the license for the initial broadcasting of the series;
- (2) 20% - from other licenses to ABC, CBS or NBC;
- (3) 25% - from licenses to Canadian national network (CBC, CTV or Global);
- (4) 35% - from all other U.S. licenses other than covered by (1) or (2) above;
- (5) 40% - from all licenses other than those listed in the preceding subparagraphs.

B. 40% - from the exploitation of other uses of the series not otherwise covered specifically herein. Company will absorb out of its 40% fee all fees and commissions to third parties for services and its costs in connection with the exploitation of such rights (but not payments to talent, writers, or other similar participants).

C. Theatrical - 35% from licensing the exhibition of the series in theatres in the U.S. and Canada, and 25% elsewhere throughout the world.

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EXHIBIT "A"

4. Distribution Expenses shall include all costs and expenses of distribution and exploitation of the series, or which are customarily treated as deductible expenses in the television industry, including, without limitation, the following:

A. "Print costs", which include the cost of release prints, duped and dubbed negatives, soundtracks, tapes, cartridges, cassettes, and any and all other duplicating material and facilities, together with reels, cans, containers, and including inspecting, repairing and renovating, packing, storing, shipping, insuring and all other such costs connected with the distribution of the series.

B. All costs of advertising, publicizing, exploiting and promoting the series by such means and to such extent as Company may deem appropriate.

C. All costs, including production overhead, of accommodating the series for various distribution uses, including retitling, removing commercial material, dubbing for foreign distribution or otherwise altering or editing the series.

D. All taxes (however denominated) assessed upon the negatives, duplicate negative, prints, tapes, or other materials relating to the series, or upon the use or distribution thereof, or upon revenues derived therefrom and/or the remittance thereof; and any and all sums paid or accrued on account of duties, customs and imposts, costs of acquiring permits, "Kontingents" and any similar authority to secure the entry, licensing, televising or other use of the series in any country or part thereof. The deductible amount of any sums referred to in this subdivision (D) shall not be affected by the manner in which the same are treated by Company in its own income, franchise, excess profits or other tax returns.

E. All royalties and similar payments to manufacturers of sound equipment, cartridges, cassettes, etc. (not included in Production Costs) and all payments (including residuals, royalties, contingent deferments when earned, payroll taxes and fringe benefits) pursuant to collective bargaining agreements or other agreements by reason of any exhibition of the series or the exercise of any rights therein.

F. All costs and expenses resulting from claims and lawsuits involving the series, except for and excluding any and all costs and expenses resulting from any claims made by Universal City Studios, Inc. and protection therefrom, including errors and omissions insurance premiums, costs of copyright search and registration, and investigation and defense. To the extent that any such claim or lawsuit is the responsibility of Participant under the Agreement, the

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cost thereof shall be borne by Participant and not deducted under this subdivision (F).

G. All costs of collecting Gross Receipts and transmitting same to the United States, including attorneys' fees, auditing and checking costs, and costs of contesting taxes, charges and other expenses, with a view to reducing the same; and also including costs incurred in preventing unauthorized exhibitions of the series and collecting damages for copyright or other infringements thereof (net collections to be included in Gross Receipts).

5. Production Costs shall include the total cost of producing the series including all direct and indirect items incurred in connection with the production thereof. Such costs shall include but not be limited to all charges and expenses for above-the-line personnel and services, including fees for regular employees of Company who render production or creative services on the series and receive credit as Executive Producer, Supervising Producer, or other customary credits; below-the-line facilities, equipment, materials, services, personnel; legal and accounting fees; all fixed dollar deferred payments; any unrecouped advances or guarantees of any portion of Participant's or any third party's share of Net Profits; interest on unrecouped monies advanced for the series by Company computed quarterly at 1-1/2% above the prime rate charged by the Bank of America; and any other charges customarily deemed production costs in the television industry. Company shall, in addition, be entitled to charge a combined production fee overhead allowance in an amount equal to 12 1/2% of all direct costs.

6. Accounting -

(a) Accounting statements will be rendered by Company to Participant not later than sixty (60) days after the close of each accounting period during which any Gross Receipts are received by Company, and each such statement shall set forth in reasonable detail the Gross Receipts received by Company during the accounting period and the permitted charges, costs and expenses deducted from such Gross Receipts. The portion of Net Profits, if any, shown to be due by such statement, shall be paid by Company to Participant together with said accounting statement.

(b) During the time the series is being produced on a first run network broadcast basis, the "accounting period" shall be based upon the period known as the broadcast season established by the network. At such times as the series hereunder is not being broadcast on a first run network basis, the accounting period shall be semi-annual based on the regular fiscal year of the Company.

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(c) The term "series" as used herein refers to the individual episodes of the series and any special programs originally telecast under the title referred to in the Agreement. All episodes and special programs produced pursuant to a network order for a given broadcast season shall be included in the accounting period for that broadcast season. If a pilot for the series is produced by Company, the pilot shall be deemed to be one of the episodes of the series for the first broadcast season, whether or not the pilot is telecast as an episode of the series. If the Agreement to which this Schedule is attached covers Participant's continuing services on the series, the participation herein shall apply only to those episodes upon which such services are completed.

(d) If, during any accounting period or periods Company does not realize any Net Profits, but, instead, incurs a net loss, such loss or losses shall be carried forward into the next and any other subsequent accounting periods in which Net Profits are realized and applied as a reduction of said Net Profits.

(e) Company will maintain at its principal place of business books and records relative to the determination of Gross Receipts and Net Profits hereunder. Upon request, Company will permit Participant, or an independent Certified Public Accountant designated by Participant, to make an examination, at Participant's expense, of such books and records, which examination may take place upon ten (10) days advance written notice to Company, at Company's office during reasonable business hours. Each statement rendered hereunder shall be binding upon Participant upon the expiration of twelve (12) months from and after the date upon which such statement is rendered, provided that this limitation shall not apply to any portion of any statement to which Participant files written objections at any time during said twelve (12) months period.

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(f) Any monies received by Company or a subdistributor or other representative in foreign funds shall not be considered Gross Receipts hereunder unless and until the same shall have been actually received in the United States in United States currency by Company, less any discounts, losses, costs or expenses suffered or imposed upon Company with respect to the transmittal of such money to the United States and the conversion thereof to United States currency; provided that, if the transmission of any Gross Receipts derived from the series from any countries or territories into the United States is prevented by embargo, blocked currency regulations or other restrictions, then, if Company so elects (by giving notice to Participant to such effect), or Participant so requests (by giving notice to Company to such effect), Company shall (to the extent

permitted under the laws of any such country wherein such monies are blocked or frozen) deposit Participant's share of Gross Receipts to which Participant would be entitled upon transmission to the United States in Participant's name (or in such name as Participant may designate) in any bank or other depository designated by Participant (or by Company if Company elects to so deposit such monies and Participant fails to designate a depository) in such territory or country. Such deposit will, for the purposes of this Schedule, be deemed payment to Participant of the amount so deposited (computed at the rate of exchange prevailing and reasonably available to Company at the time such deposit is made) and Company shall have no further liability to Participant in connection with any monies so deposited.

7. Allocations and Reserves. If Company incurs any costs and/or receives any receipts in respect of matters pertaining to the series together with other matters, a portion of such costs and/or receipts shall be allocated to the series in accordance with Company's usual and customary accounting procedures. If Company reasonably anticipates retroactive wage adjustments, guild residuals, uninsured claims or other reasonably anticipated costs, expenses or losses relating to the series, which, if and when incurred, will be properly deductible hereunder, Company may set up appropriate reserves therefor. Company may also establish reasonable reserves for working capital for the series for the succeeding broadcast season, not to exceed an amount equal to one episodic license fee.

8. Assignments, etc. Participant shall have the right to sell, assign, transfer or hypothecate all or any part of its interest, if any, in and to all or any part of the monies payable to Participant hereunder; provided that any such assignment shall be subject to all pertinent laws and governmental regulations and to the rights of Company hereunder. If at any time more than two parties shall be entitled to receive payments which, under the terms hereof, are to be paid to or for the account of Participant, Company may, at its option, require that all such parties execute and deliver an agreement in Company's usual form appointing a disbursing agent for all such parties.

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In the event Participant shall propose to sell, assign or transfer all or any part of its interest, if any, in and to all or any part of the monies payable to Participant hereunder, other than by way of bona fide merger, consolidation, or acquisition of Participant, or bona fide gift, bequest or devise, Company shall have the right of first refusal to acquire the same, which right Company may exercise within ten (10) days after receipt of written notice from Participant specifying the prices and other terms and conditions upon which Participant proposes to make such sale, transfer or assignment. Should Company fail to exercise said right of

first refusal as aforesaid, then Participant shall not sell, transfer or assign such monies or any part thereof to any third party upon terms and conditions more favorable to such third party than those set forth in said written notice without again giving Company the opportunity to exercise said right of first refusal in accordance with the foregoing procedure.

9. Ownership of Programs. Notwithstanding the Net Profit participation payable to Participant hereunder, Participant shall have no right, title or interest of any kind or nature in and to the series other than its copyright and trademark rights in the underlying Property, or any distribution, subsidiary, merchandising, or other rights derived therefrom except for payments due as set forth herein and under the Agreement to which this Schedule is attached; and nothing herein contained is intended to or shall constitute Participant a partner or joint venturer with Company.

10. Exercise of Rights. As between Company and Participant, Company only shall own solely, and have complete authority to exploit the series and the distribution, syndication, and all other rights therein throughout the world, except for the territory of Japan, in accordance with such methods, policies and terms as Company may determine in its uncontrolled discretion subject to the provisions of any collective bargaining agreement. Company has not made any representations or warranties, and is not required so to do, as to the amount of proceeds to be derived from the exploitation of the series nor that there will be any sums payable to Participant hereunder. Company may, in the exercise of its best judgment, refrain from exploiting all or any of its rights in the series, or any episodes thereof, in any territory for any reason. Company shall use its reasonable efforts, consistent with sound business practices, to maximize the Gross Receipts of the series.

11. Sale. Company shall have the right to sell or otherwise dispose of part or all of its right, title, and interest in the series, or any rights therein, either (a) free and clear of Participant's interest specified herein, or (b) subject to Participant's interest, at its election. If made under (a) then the proceeds received by Company shall be deemed Gross Receipts hereunder, and Participant's sole rights shall be under this Schedule. If made under (b), then the proceeds received by the Company shall not be deemed Gross Receipts hereunder, and Participant's sole rights shall be against the new Buyer. In such latter event, Company agrees to secure from Buyer a written agreement for the benefit of Participant (i) to comply with all the terms and conditions hereof for Buyer's benefit, (ii) to assume all of Company's obligations to Participant hereunder, and (iii) to secure from any subsequent Buyer the same agreement to be bound by this Agreement.